

Supreme Court, U. S.

FILED

APR 4 1978

MICHAEL RODAK, JR., CLERK

A P P E N D I X

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

NO. 77-719

**JEROME D. CHAPMAN, COMMISSIONER OF
THE TEXAS DEPT. OF HUMAN RESOURCES,
ET AL.,**

—v.—

**HOUSTON WELFARE RIGHTS
ORGANIZATION, ET AL.,**

**ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH
CIRCUIT**

**PETITION FOR CERTIORARI FILED
NOVEMBER 21, 1977
CERTIORARI GRANTED FEBRUARY 21, 1978**

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ARTICLE I
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Jurisdiction, para. 3—Jurisdiction is conferred on this court by 28 U.S.C. §1343 (3 & 4) and §1337.

Jurisdiction, para. 4—Plaintiffs' action for declaratory and injunctive relief, and for damages, is authorized by 28 U.S.C. §2201 and Rule 57 of the Federal Rules of Civil Procedure, which relate to declaratory judgments, and by 42 U.S.C. §1983, which provides redress for the deprivation under color of state law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the laws of the United States.

Class action allegation, para. 9 & 10—The named plaintiffs bring this action on behalf of their members as in the case of the Houston Welfare Rights Organization, Inc., and on their behalf as in the case of the families of plaintiffs, and pursuant to Rule 23(a) & (b)(2) of the Federal Rules of Civil Procedure on behalf of all other persons similarly situated.

The AFDC class relevant for the first count contains all those persons who are recipients of AFDC whose checks were reduced or whose eligibility was terminated by implementation of the single figure needs allowance under §3130 of the Texas State Department of Public Welfare, Financial Services Handbook (11/72) (FSH 3130) and form 36 of the Texas State Department of Public Welfare Forms manual (11/72). As to this class, the requirements of Rule 23 are met in that the class is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative parties will fairly and adequately

Count one, para. 1—This first count asking for declaratory and injunctive relief is brought because plaintiffs seek to enjoin the implementation of the single figure needs allowance which began March 1, 1973, by the Texas State Department of Public Welfare. The single figure needs allowance significantly reduced grants for substantial numbers of recipients of Aid to Families with Dependent Children (AFDC) and unfairly worked against the smaller families.

Article II

FIRST AMENDED COMPLAINT

protect the interests of the class; and the defendants have acted on grounds generally applicable to the class, thereby making appropriate final and injunctive and declaratory relief with respect to the class as a whole. Factual allegations, para. 17 through 59—

17. Plaintiff Houston Welfare Rights Organization, Inc., is a nonprofit corporation of low income people residing in Harris County, Texas. It was originally organized in January, 1969, in response to the welfare cuts announced for that May. In 1971, it incorporated and today it has some 200 dues paying members and another 200 associate members. The purposes of the organization include providing welfare recipients and the low income people of Harris County with proper information of their rights and working for the prevention of injustice. A substantial amount of its work and its membership comes from recipients of AFDC. This purpose was adversely affected by the actions of defendants.

18. Plaintiff Agnes Stafford heads a family composed of a fourteen year old child, Don Littleton. Doing the best she could in February, 1973, she budgeted \$17 for rent in a public housing project, about \$2 for utilities, \$21 for food stamps, \$7 for telephone, \$20 for school and other expenses such as furniture, medical costs and transportation from her \$87 Veterans Administration pension and \$12 AFDC check. When her AFDC grant was terminated, she lost medicaid in addition to having great difficulty meeting her family's needs.

19. First plaintiffs received notice on Monday, February 12, 1973, which told her she would be denied AFDC on March 1, 1973, because of budgeting changes. Defendants denied plaintiff according to that schedule.

20. On May 14, 1973, first plaintiffs were partially restored to AFDC. Defendants reinstated the child only and certified him for \$24 per month as a noncaretaker family. Although this constitutes an overall increase in income, Agnes Stafford still has been denied medicaid and automatic food stamp eligibility because of the budgeting changes.

21. Plaintiff Dorothy Marie Phoenix of the second family of plaintiffs raises three children—Cardell Smith, 8 years old; Theresa Phoenix, 6 years old; Mary Phoenix, 3 years old.

22. Second plaintiffs had established a monthly budget for February, 1973, of \$92 rent, \$26 furniture payment, \$25 food stamp price and other miscellaneous expenses, especially clothing. They tried to meet these expenses on a monthly AFDC check of \$148.

23. Second plaintiffs received notice on February 12, 1973, which stated that their check would be reduced to \$140 on March 1, 1973. Defendants did reduce their grant that amount.

24. Plaintiff Paula Ortega heads the third family of plaintiffs raising her child Reymundo Ortega, 11 years of age. In February, 1973, she received an AFDC check of \$89 for that purpose.

25. Third plaintiffs live with Maria San Juana Ortega, the sister of Paula Ortega, who is a recipient of Aid to the Permanently and Totally Disabled (APTD) from defendants. She is disabled because of birth defects and receives a \$91 APTD grant. She is also the legal ward of Paula Ortega, her guardian.

26. Third plaintiffs also live with Josefina Ortega, the mother of Paula Ortega, who is not a recipient of State Welfare and has no income of her own.

27. Third plaintiffs out of their AFDC check and in managing the APTD grant of Maria San Juana Ortega paid the following monthly expenses: a house note of \$51.33 per month, \$47 for food stamps, \$30 car expenses, \$20 loan for tires, \$15 for furniture bills, \$8 for eyeglasses, \$29 for a refrigerator as well as utility bills.

28. Third plaintiffs presently are seeking a loan to repair their roof which leaks rain.

29. In March, 1973, third plaintiffs suffered a reduction in their AFDC check from \$89 to \$86.

30. Prior to March, 1973, third plaintiffs had appealed twice to defendants' hearing officer the reduction of their AFDC grant to \$89 because of the proration of rent and utilities. The hearing officer sustained defendants' policy on September 9, 1971, and August 22, 1972.

31. Because of the utilization of a single figure needs allowance at the established need level, plaintiffs, their families and other similarly situated suffered severely: some from reduction in their grants and others from total termination from all welfare benefits.

32. FSH 3130 and form 36 consolidate four items of need into a single figure needs allowance for Aid to Families with Dependent Children (AFDC) recipients. The provisions comprise the basic measure of poverty used by defendants to define eligibility and grant levels for its AFDC program.

33. Texas, as fifty-three other jurisdictions, cooperates with the federal government in providing financial assistance to dependent children through the AFDC program. In order to receive federal funds of about \$98 million in fiscal 1971 to match with \$27 million state dollars, the defendants write a state plan to

meet the provisions of the AFDC program (42 U.S.C. §601 et. seq.).

34. The relevant statutory provision for this cause of action is 42 U.S.C. §602(a) (23):

A State plan for aid and services to needy families with children must (23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.

35. The United States Department of Health, Education, and Welfare in implementing this statute has issued regulations governing consolidation of the composite parts of the standard of need (45 C.F.R. §233.20(a) (2) (ii)):

In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with sub paragraph (3) (viii) of this paragraph.

36. 42 U.S.C. §602(a) (23) establishes a floor below which the standard of need cannot be reduced.

37. 42 U.S.C. §602(a) (23) also permits the defendants to consolidate the items of need only so long as the result includes all former items of need, fairly prices those items and finally fairly averages need.

38. The State of Texas has established that the purpose of the standard of need in the AFDC program is

to enable recipients to achieve and maintain a standard of reasonable subsistence compatible with decency and health. (TEX. REV. CIV. STAT. ANN. art. 695c, §17).

39. Prior to March 1, 1972, all AFDC families benefited from a standard of need that was the sum of four separate kinds of need with various allowances and some dollar maximums.

a. Personal need allowance

- (1.) \$65 for an adult recipient
- (2.) \$25 for a child under 18 years of age
- (3.) \$39 for a child 18-21 years of age

b. Rent or shelter allowance, a dollar maximum,

- (1.) For private or owned housing, as paid up to,
 - (a.) 1-2 persons \$33
 - (b.) 3-4 persons \$44
 - (c.) 5 or more \$50
- (2.) For public or federally subsidized housing an allowance
 - (a.) 1 person \$36
 - (b.) 2-4 persons \$42
 - (c.) 5 or more \$50

c. Utilities allowance for private housing only \$13

d. Special needs

- (1.) dentures \$63 once per year
- (2.) chronic chiropractic care \$6 per month
- (3.) chronic podiatrist care \$6 per month
- (4.) chronic dental care \$6 per month
- (5.) social care up to \$247.50 per month
- (6.) glasses \$17 once per year
- (7.) hearing aids \$80 once per year

40. From the above schedule, the AFDC grant was calculated in three steps:

- a. First, defendants totaled the individual items of need to obtain a standard of need for the family.
- b. Second, defendants applied a percentage reduction factor of 75% to get recognizable needs.
- c. Third, defendants subtracted any income actually available to the family from the recognizable needs to arrive at the grant figure.

41. However, the need stated for the shelter and utilities items was further reduced before March 1, 1973, by two policies: prorating when nonrecipients lived in the home and budgeting zero needs when these items were provided.

42. If a recipient of AFDC, OAA, AB or APTD lives with a nonrecipient who is not a spouse or an essential person, defendants budget only the prorata shelter and utility needs (FSH 3141.2, 3141.3 & 3420.4 (11/72)).

43. If a recipient lives with nondependent relatives who provide shelter and utilities, then the person is budgeted zero needs for each item (FSH 3141.2 & 3141.3 (11/72)).

44. After March 1, 1973, the standard of need will be determined solely (sic) from the chart for AFDC families with or without a caretaker:

AFDC Single Figure Needs Allowance Per Month

Family size	1	2	3	4	5	6	7	8	9	10	+
Non-caretaker	\$32	\$62	\$90	\$118	\$146	\$174	\$202	\$230	\$258	\$286	irregular
Caretaker	\$ 0	\$115	\$155	\$187	\$218	\$246	\$273	\$300	\$326	\$353	irregular

45. Defendants have averaged shelter costs to a figure as low as \$17 per month for a caretaker family of two to no more than \$40 per month for any family.

46. Defendants have also included in their average utility allowances budgeted at less than the full \$13 allowance-- a budgeting practice which violates their own regulations (FSH 3141.2 (11/72)).

47. On its face these need figures represent a reduction in the standard of need below the floor established in September, 1969, for all noncaretaker and all caretaker families paying full rent in private housing with ten members or less and for those in public housing with three members or less. The reduction runs from 16% for caretaker families of two to less than 1% for families of nine. These figures are compared in attached tables.

48. The single figure needs allowance results in a termination from all welfare benefits of the first family of plaintiffs of Agnes Stafford:

Before March 1, 1973		After March 1, 1973	
Personal needs: \$65 x 1 adult	= \$ 65	Single figure	
\$25 x 1 child	= 25	Needs Allowance	\$115 x 75%
Shelter for 2 in public housing	= 42	Recognized Need	86
Utilities	= 0	Minus VA check =	\$ 87
Special needs	= 0	No AFDC grant	0
Total needs	= 132 x 75%		
Recognized needs	= \$ 99		
Minus VA check	= 87		
Actual AFDC grant	= 12		

49. The single figure needs allowance represents a lower standard of need and grant for the second family of plaintiffs Dorothy Marie Phoenix:

Before March 1, 1973		After March 1, 1973	
Personal Needs: \$65 x 1 adult	= \$ 65	Single Figure	
\$25 x 3 children	= 75	Needs allowance =	\$187 x 75%
Rent for 4 persons in private			
housing	= 44	Recognized needs	\$140
Utilities	= 13	No other income	-0
Special Needs	= 0	Actual AFDC grant	\$140
Total needs	\$197 x 75%		
Recognized needs	\$148		
No other income	-0		
Actual AFDC grant	\$148		

50. The single figure needs allowance represents a lower standard of need and grant for the third family of plaintiffs Paula Ortega:

Before March 1, 1973		After March 1, 1973	
Personal needs: \$65 x 1 adult	= \$65.00	Single figure needs	
\$25 x 1 child	= 25.00	allowance for care- taker family of two	
% of housing allowance for 4	= 22.00	= \$115 x 75%	
persons in private housing		Recognized needs	= \$ 86
½ x \$44.00		No other income	=-\$ 0
% of utility allowance	= 6.50	Actual AFDC	
½ x \$13.00		grant	=\$ 86
Special needs	= 0.00		
Total needs	\$118.50 x 75%		
Recognized needs	88.88		
No other income	-0.00		
Actual AFDC grant	\$ 89.00		

51. Defendants fail to state actual need by averaging arbitrary dollar maximums for shelter in private and owned housing.

52. Defendants' proration of shelter and utility needs bears no relation to actual need and works unfairly to reduce the average.

53. Defendants' proration of shelter and utility needs also constitutes an assumption of income in violation of 45 C.F.R. §233.20(a) (3) (ii).

54. Defendants' proration of shelter and utility needs finally violates the money payment principle of the

Social Security Act (42 U.S.C. §606(b); 45 C.F.R. §234.11(a), in that it penalizes recipients who choose to live with nonrecipients who are neither their spouse, nor their essential person.

55. Defendants obscure the actual need by averaging zero shelter and zero utility needs.

56. Defendants violate their own regulations and understate actual need by averaging less than full utility allowances.

57. Finally defendants have consistently underevaluated the consolidated needs of recipients and therefore have on the face of the figures reduced the standard of need below the 1969 level.

58. Furthermore the Department fails to meet the purpose of 42 U.S.C. §602(a)(23) which is to lay bare the extent to which the AFDC program falls short of fulfilling actual need.

59. Therefore, FSH 3130 and form 36 violate 42 U.S.C. §602(a)(23) as to plaintiffs and others similarly situated by stating a standard of need that fails to maintain a reasonable relationship to real needs in Texas.

Second count, para 61 & 62— This second count asking for declaratory and injunctive relief is brought because plaintiffs seek to enjoin the reduction of shelter and utility needs by the policy of proration of the Texas State Department of Public Welfare. Although some recipients of public assistance have full need for the maximum shelter and complete utility allowance because they choose to live with nondependents who are neither their spouse nor their essential person as defined

by defendants, they receive less than the full allowances. These lesser allowances have also been averaged in and therefore have reduced the new AFDC single figure needs allowances.

The policy of proration is unlawful for two reasons:

- a. It constitutes an assumption of income in violation of an important principle of public assistance promulgated in the federal regulations.
- b. It also violates the money payment principle of the Social Security Act by penalizing recipients who choose to live with nonrecipients.

Class action allegation, para 65-66—The named plaintiffs for the second count bring this action on behalf of their members as in case of the Houston Welfare Rights Organization, Inc., and on behalf of themselves as in the case of the families of plaintiffs, and pursuant to Rule 23(a) & (b) (2) of the Federal Rules of Civil Procedure on behalf of all other persons similarly situated.

The class for the second count contains all those persons who are, were or will be recipients of Aid to Families with Dependent Children (AFDC) whose shelter and utility needs are reduced by the policy of proration located at §3141.3 and §3420.4 of the Financial Services Handbook of the Texas State Department of Public Welfare (FSH 3141.2, 3141.3 & 3420.4). And the class also includes all those members of the class for the first count of this complaint whose checks will be reduced or whose eligibility will be terminated by the implementation of the single figure

needs allowance under FSH 3130 and form 36. As to the class for the second count, the requirements of Rule 23 are met in that the class is so numerous that the joinder of all members is impractical; there are questions of law and fact typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class; and the defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

Article III

MOTION FOR SUMMARY JUDGMENT

Defendants' Motion for Summary Judgment, full para.— COMES NOW John L. Hill, Attorney General of the State of Texas, by and on behalf of Defendants in the above entitled and numbered cause of action, and respectfully moves this Court pursuant to the provisions of Rules 56 (b) and (c) of the Federal Rules of Civil Procedure, for an order granting summary judgment for the Defendants, on the ground that the pleadings and affidavits hereto attached, depositions and interrogatories, and memorandum of law in support of this motion, show that there is no genuine issue of material fact and the Defendants are entitled to judgment as a matter of law.

Article IV

FINAL JUDGMENT

Pursuant to the Memorandum and Opinion of this Court issued on February 11, 1975, and the Court having determined from the pleadings, depositions and record herein that there is no genuine issue as to any material fact in this Cause and that the Defendants are entitled to Judgment as a matter of law,

It is hereby ORDERED, ADJUDGED and DECREED that all relief sought by the Plaintiffs herein is denied, that Summary Judgment is hereby granted in all respects for the Defendants, and that costs be taxed against the Plaintiffs herein.

Done this 15th day of April, 1975, at Houston, Harris County, Texas.

Article V

MOTION TO REOPEN COURT'S MEMORANDUM AND OPINION FOR LEAVE TO AMEND PETITION TO STATE A NEW CAUSE OF ACTION AND FOR A THREE-JUDGE COURT

Plaintiffs make this motion to reopen the memorandum and opinion of the court for leave to amend their petition to state a new cause of action and for a three-judge court under the implied power of Rules 52(b) and 15 of the Federal Rules of Civil Procedure. In support they state the following:

1. A motion to reopen is entitled to more consideration than (sic) a motion to modify judgment or for new trial because of its timeliness.
2. In its opinion, the court was unable to reach the constitutional grounds because they were not plead, although they were briefed (Memo at 14).
3. Plaintiffs have filed a class action composed of over one half of all the recipients of Aid to Families with Dependent Children in Texas (AFDC).
4. Plaintiffs argue that it would be in the interest of a just, speedy, and inexpensive determination of every action to grant leave to amend the petition or for

supplemental pleadings under Rule 1 of the Federal Rules of Civil Procedure.

5. The plaintiffs further argue that the addition of the constitutional issues to this action would allow determination by a three-judge court without further proceedings before the instant tribunal which would have been substantially the approach required at (sic) the issues been alleged before the entry of the pretrial order and the termination of amendments.

PREMISES CONSIDERED, plaintiffs pray for leave to amend or file supplemental pleadings to state constitutional causes of action and for other appropriate relief.

**MOTION TO MODIFY JUDGMENT FOR
INSUFFICIENCY OF EVIDENCE AND FOR
LEAVE TO AMEND PETITION TO STATE NEW
CAUSES OF ACTION**

Plaintiffs make this motion to modify judgment for insufficiency of evidence pursuant to Rules 59(e) and 52(b) of the Federal Rules of Civil Procedure. They also make this motion to modify judgment for leave to amend petition to state new causes of action under Rules 15 and 52(b). In support, they reiterate all the facts, claims, affidavits and arguments stated to support motions to reopen the court's memorandum and opinion which were filed on April 10, 1975.

PREMISES CONSIDERED, plaintiffs pray for revision of the court's memorandum and opinion and for leave to amend petition and file supplemental pleadings and for full relief as prayed for in the amended petition on file and motion for summary judgment of plaintiffs.

**Article VI
ORDER**

Plaintiffs' Motion to Reopen Court's Memorandum and Opinion for Insufficiency of Evidence is denied.

Plaintiffs' Motion to Reopen Court's Memorandum and Opinion for Leave to Amend Petition to State New Cause of Action and for Three-Judge Court is denied. The demands of this Court's docket do not permit it to allow a party who has had its day in court to restructure and replead its case merely because it has obtained an adverse decision.

DONE at Houston, Texas, this 9th day of May, 1975.

**Article VII
ROUSE DEPOSITION**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

HOUSTON WELFARE RIGHTS ORGANIZATION,
INC., AGNES STAFFORD, INDIVIDUALLY
AND ON BEHALF OF HER GRANDSON;
DOROTHY MARIE PHOENIX, INDIVIDUALLY
AND ON BEHALF OF HER THREE MINOR
CHILDREN; AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

vs. CA 73-H-296
COMPLAINT CLASS ACTION

RAYMOND W. VOWELL, COMMISSIONER OF
THE TEXAS STATE DEPARTMENT OF PUBLIC
WELFARE, ET AL

DEPOSITION OF LESTER CHARLES ROUSE,
JR. taken on the 24th day of April, A.D., 1973, beginning
at 9:00 A. M., in the offices of the Legal Service Division,

State Department of Public Welfare, Reagan Building, Austin, Texas, before Bette Jo Mitchell, a Notary Public in and for Travis County, Texas, pursuant to the following stipulation and waiver of counsel.

A P P E A R A N C E S :

FOR THE PLAINTIFFS:

MR. JEFFREY J. SKARDA, Houston Legal Foundation, 2912 Luell Street, Houston, Texas 77016.

FOR THE DEFENDANTS:

MRS. CAROLYN BUSCH, Legal Services Division, State Department of Public Welfare, Reagan Building, Austin, Texas; MR. LEE EDWARD HARTMAN, JR., Staff Attorney, State Department of Public Welfare, Reagan Building, Austin, Texas;

MRS. PENNY J. BROWN, Assistant Attorney General of Texas, Supreme Court Building, Austin, Texas.

STIPULATION

It is stipulated and agreed by and between counsel for the respective parties hereto that the deposition of the witness, LESTER CHARLES ROUSE, JR., may be taken at this time and place before Bette Jo Mitchell, a Notary Public in and for Travis County, Texas; time and notice being waived; and that the said deposition, or any part thereof, when so taken, may be used on the trial of this case with the same force and effect as if the witness were present in court and testifying in person.

It is further stipulated and agreed by and between counsel for the respective parties hereto that the

necessity for preserving objections at the time of taking is waived, and that any and all legal objections to this deposition, or any part thereof, may be urged at the time same is sought to be offered in evidence on the trial of this cause.

Q (By Mr. Skarda) With respect to the financial services programs that you administer, these are categorical assistance programs, aren't they, that match federal dollars with state dollars to provide assistance to the blind, disabled, families with dependent children, and old age?

A Yes.

Q And, then working within these programs you are obliged to comply with certain federal regulations.

A That is correct.

Q Before March 1st, 1973, what manner did the Texas State Department of Public Welfare use for determining a grant for an A. F. D. C. family?

A We had certain chart figures here, that is quite detailed on a form. How much do you want? Do you want an exhibit or -

Q Could you just state the various items of need and the method of averaging those items?

A Well, A. F. D. C., we had one item that is known as personal needs, which is a composite figure that represents food, and clothing and incidentals. Now, years ago we itemized those separately, but we combined them into one item and that was called personal needs. That is the same for everyone that is a recipient -- Well, it varies, according to whether the person is a recipient or a dependent or a child, and I think it would be easier to refer to the chart, because it's rather complex.

Q Do you have a chart here that we can enter into the record?

A Yes. Now, this is item 5 here, and then I have another item 6 here, is what the allowances are today.

MRS. BUSCH: This is chart allowance, the chart of allowances prior to the conversion to the new method. Mark that Defendants' Exhibit A.

(An instrument was marked Defendants' Exhibit A for identification)

Q (By Mr. Skarda) Under Plan 13, this reflects a number of different items of need, personal need, housing, utilities, special allowances, and these represent essentially those items paid for by the department before March 1st, 1973.

A That's correct.

Q Now, tell me, would a caseworker take each one of these that is applicable to the particular family and add up the items of need, and, then what happens, after you get a total standard of need for the family?

A Well, the first thing that is applied to the total

State of Texas
Department of Public Welfare

Form 34
Effective Oct., 1972

STANDARD BUDGETARY ALLOWANCES

The amounts listed below are the chart allowances for budgeted items and grant maximums for each category (except AFDC, which has no maximum). The total needs of all eligible recipients must be budgeted. Recommended grants, however, cannot exceed the maximum grant for adult categories as determined on the basis of the amount of funds available to each category. The amount of total needs in a budget may be greater than the recommended grant due to the maximum grant limitation.

	MAXIMUM GRANTS	Percentage of Budgetable Needs Recognized for Each Category
OAA	\$133.00	OAA 100%
AB	\$133.00	AB 100%
APTD	\$133.00	APTD 100%
OAA and AB, age 65 or over, in Foster Care Homes . . .	\$179.00	AFDC 75%

BASE PLANS

02	No Budget (Social Services only and AFDC Foster Care)	13 All Medical and Public Assistance Budgets in Which No Other Plan is Applicable
04	Room and Board, Retirement Home, Cafe Meals	14 Institutional - Mental Hospital
09	Foster Care for the Aged- Non-Vendor	15 Extended Care Facility
10 (ICF II), 11 (ICF III), 12 (Skilled Nursing Home)	Vendor Nursing Care	16 Institutional - State School for the Mentally Retarded
		17 Institutional - Tuberculosis Hospital

BUDGETARY ALLOWANCES

PLAN 6	PLAN 13
Adult Recipient	\$133.00
Adult Essential Person	\$129.00
Entered in Personal Needs for cases in retirement home, room and board arrangements and cafe meals arrangements. (\$100 of this allowance represents the maximum budgetable rate for room and board.)	

PLAN 9
Personal Needs Allowance . . . \$ 25.00
Social Care Allowance . . . \$135.00

PLANS 10, 11, 12 and 15
OAA, AB and APTD adult recipient
Personal Needs \$25.00

See Schedule of Rates for Vendor Maximum Amounts

PLANS 14, 16 and 17
OAA, AB and APTD adult recipient
Personal Needs \$12.00

AFDC child in State School for
the Mentally Retarded \$ 8.00

AFDC FOSTER CARE
Base Plan 02, Type of Program 08
DAILY RATES:
\$2.20 for child requiring normal care in a DPW or other licensed child-placing agency approved Foster Home
\$3.00 for child requiring exceptional care in a DPW or other licensed child-placing agency approved Foster Home only
\$1.60 for child requiring normal care in an approved child-caring institution
\$2.20 for child requiring exceptional care in an approved child-caring institution

PMR 567

HOUSING
Rented Quarters - Public, Including Utilities
1 person \$36.00
2-4 persons \$42.00
5 or more persons \$49.00

Rented Quarters - Private (as paid up to)
1-2 persons \$33.00
3-4 persons \$44.00
5 or more persons \$50.00

Owed Quarters - Private (as paid up to)
1-2 persons \$33.00
3-4 persons \$44.00
5 or more persons \$50.00

UTILITIES
Allowance per family \$13.00

SPECIAL ALLOWANCES
Glasses (Code 121) \$17.00
Dentures (Code 122) \$63.00
Hearing Aid (Code 123) \$80.00

and regulations to agree with -- Well, H.E.W.'s rules and regulations just wouldn't match with HUD's rules and regulations, and we were always -- every time we would raise a grant, that would do something to their income, and then they had an income schedule and they would have to raise their grant, or raise their rent, and then we would have to go back and raise ours. It was a vicious cycle.

MR. SKARDA: Now, I would like to introduce an exhibit, Plaintiffs' Exhibit A.

(An instrument was marked Plaintiffs' Exhibit A for identification)

Q (By Mr. Skarda) On page 4 of Plaintiffs' Exhibit A we have what I understand to be the averages for caretaker families.

MRS. BUSCH: Let's identify this document a minute.

A Okay.

MRS. BUSCH: Mr. Skarda, these are the figures that I gave you in Houston that represent the averages that were presented to the Board of Public Welfare.

Q (By Mr. Skarda) Now, if you would look at this a minute, Mr. Rouse, under the housing figure, the average there was thirty-three dollars point eight three eight, that represents that amount average for shelter across the board over these four month periods.

A Across the board, including the public housing, the private housing, and taxes and anything going into shelter. Now, that was taken from amounts actually budgeted at the time, see.

Q This thirty-three dollar figure does represent approximately eleven dollars, ten to eleven dollars less than the forty-four dollar maximum for rent in private housing.

A But we never had a flat figure that everybody got forty-four dollars. We never had that.

Q And, because of that --

A As a matter of fact, they didn't get the forty-four dollars.

Q Because of the dollar maximum, because of the proration policy, because of --

A Because --

Q -- because they might be budgeted for zero amount.

A Because they were not spending it. There was not a need. It would be a fictitious need, as you described it.

Q All the reasons we talked about earlier is the reason why this averaged out less than the forty-four dollar maximum.

A Yes.

Q Let's talk about the utility allowances for one moment. The utility allowance was thirteen dollars. It wasn't a maximum, was it, it was a chart figure?

A No, it was a chart figure.

Q Now, that was also averaged on this same Plaintiffs' Exhibit A down to a nine dollar figure.

A Yes.

Q Tell me if these were the reasons that it was averaged down to a nine dollar figure, the family might have been living with another person, therefore the utility allowance would have been prorated, is that correct?

A That's correct.

Q Exactly as it was for shelter.

A Yes.

Q Or the family could not -- might have been living in public housing and therefore had no utility allowance.

A Well, they had a utility allowance because the housing figure was a composite figure, but it was a lower amount. In other words, if you take the aggregate of what you get in private housing and compare it with what you get in public housing, it's true you get less in public housing.

Q But you didn't need as much in public housing.

A That's right, because they weren't charging as much.

...

CROSS EXAMINATION:

BY MRS. BUSCH:

Q Mr. Rouse, in order to aid the Court in understanding our budgeting procedures, I would like for you, if you would, to begin with, to go through and describe the previous budgeting methods that we were using prior to March 1st, 1973, and then in a moment I want to go back a little bit further and go back to some of the previous methods that were used. But for purposes of understanding the department's procedures which at times may appear somewhat complex, simply describe how a field worker under the prior method would build a budget and include the needs and determine the amount of the grant.

A Well, I would say, Mrs. Busch, that we have been striving toward simplification of our budgeting system. Now, as Mr. Skarda implied previously, we were doing this for the department's convenience, I would say that is a part of the reason for simplification, but on the other hand we were doing this likewise for the clients' convenience, for the clients to be able to understand what their needs were. As you know, the client has a right to know just exactly what goes into determining his grant, and so simplification actually works toward a fairer treatment of clients. Because if you have a complex system there that some of these people that haven't had the benefit of much education can't understand - I will go further than that, I will say that there are a lot of college people that can't understand our budgeting procedure, the one we had. It's kind of like Topay, it just kind of grew.

Q Well, I would like to get into some more things on simplification.

A Yes, okay.

Q But, right now, why don't you just tell us, if you were a field worker in February, how you would have built a budget under the previous method.

A Well, we have here -- Well, this is a little difficult without you telling me what kind of a family. It would depend upon what size family, how many different factors could enter into it --

Q Let's take the same hypothetical we have been using of a mother and three children, and, for example, the things that would need to be verified, such as rent and utilities and any special needs that this family might have. Just describe the amount of budgeting detail that a worker had to go through under the prior system.

A All right. So, you have given me the size of the family, and so then I will have to ask you, are you talking about the children being under eighteen or over eighteen?

Q Under eighteen.

A Under eighteen. Are you speaking of a family that lives in public housing or in private housing? That is a factor the worker would have to determine.

Q No, I am speaking of a family that is living in private housing, in a home that they own, that was purchased by the mother and a deceased father before his death, and she owns the home.

A All right. Then, we would allow the mother a chart figure of sixty-five dollars, which is comparatively easy; the children under eighteen, twenty-five dollars each, and then you come to this item of shelter, she owns the home. Well, you would have to verify the amount of taxes owed on that home, either

from receipts in her possession or by going down to the courthouse to verify it from records. You would have to determine if she is paying insurance on the home, and you would determine whether she had any little shelter repair payment on the home. Well, you add all of these things together to get what her shelter allowance would be, what the actual amount would be. That was, of course, quite time consuming for both the worker and the client, to get together all of this information. And, then the item of utilities would be the chart figure of thirteen dollars. And, then you would determine what her income was and see how much of that --

Q Well, now, first, is it correct that you would total up all of those needs?

A Yes, you would total all of those needs.

Q And, then what would you do?

A Then what you do at that point, you apply this proration factor which recognizes seventy-five per cent of the needs, and would arrive at what we refer to as recognized needs. And, then when you come to her income, why, you have to go through various processes there of exempting certain income before you get down to the income that is charged against her, but that part of it hasn't changed and I see no point in --

Q Now, one other point of clarification. Now, if one child in this family had a need for glasses, or if another child in this family had a need for a hearing aid, what would the worker do in that instance?

A Well, the worker would have to determine that the need existed, and would have to determine that the woman had a plan for buying the glasses or whatever, and then they would budget it.

Q Now, all of these procedures that you have been describing are under the budgeting procedure that was in existence prior to March 1, 1973.

A That is true.

Q Would you describe it as a somewhat complicated procedure, and was subject to building a custom made budget for each family, which was built by the worker?

A Yes. In fact, we referred to it as a tailor made budget, an individualized budget.

Q All right. Now, Mr. Rouse, would you describe the method of determining the amount of grant under the new, what we refer to as the flat grant method, which has been in effect since March 1, 1973.

A Well, all that is necessary for the worker to determine is how many people there are in the family. You don't have to know what the taxes are, or whether they even pay any taxes or not, and -- Well, it's just that simple. If there is four people in the family, you look at a chart figure and that is what it is.

Q And, this chart figure has also had the rateable reduction applied to it so that the worker just has to look at one figure, and that is the amount of need, and from that you deduct non-exempted income.

A That's correct.

Q Okay. Mr. Rouse, in your opinion, is the new method a fairer method of administering available funds?

A It is very definitely a fairer method, because it eliminates areas of discretion, or areas of subjective judgment that a worker might exercise, and lets the client know exactly what he is entitled to, and so he can

understand it. A lot of times the clients were at a disadvantage, like in the appeal here, and they just knew vaguely they weren't getting enough money and they didn't know how to argue the case, because it was so complex.

Q Okay. Would you say that the new method is more uniform in statewide application than the prior method?

A Oh, yes. Oh, yes, it's more uniform.

Q All right. I would like to go back to some of the earlier discussion with regard to the cost of living increase which was required under Section 402-A-23 of the Social Security Act. You earlier testified that the department had made a cost of living adjustment which was required by July 1, 1969, and is it your testimony that the department did increase the standard of need at that time by eleven per cent?

A That is correct, with the exception of this little minor thing that I have already --

Q Which was later corrected.

A Yes, yes.

Q Was the action that was taken with regard to the cost of living increase provision in 1969, was it in compliance with Federal Regulations at that time?

A It was. We worked it out with the H. E. W. people. We spent many hours working on it.

Q Was the action that the department took with regard

A -- but it was approximately eleven per cent.

Q With regard to the proration, or the policy of budgeting the prorata share of utilities or housing allowance when you had non-dependent relatives sharing housing, is it correct that this policy was based on the principal that the department was not required to meet the needs of any persons other than those who were eligible for welfare assistance?

A It was based upon that principal.

Q Is it also correct that under the statutory responsibilities of the department, that the department is not required to meet the housing or utility needs of persons who are not eligible for welfare?

A That's correct, nor the food needs, or any other needs.

Q With regard to the allusion Mr. Skarda made to the Senate Interim Committee Report, is it correct that the department has never stated that its allowances are adequate to meet actual costs?

A That is correct, we have never made that statement that I know of.

State of Texas
Department of Public Welfare

Form 58
SH. 3-173

STANDARD BUDGETARY ALLOWANCES

The amounts listed below are the chart allowances for budgeted items and grant maximums for each category. The total needs of all eligible recipients must be budgeted. Recommended grants, however, cannot exceed the maximum grant as determined on the basis of the amount of funds available to each category. The amount of total needs in a budget may be greater than the recommended grant due to the maximum grant limitation.

BASE PLANS		PERCENTAGE OF BUDGETABLE NEEDS	
02	No Budget (Social Services only and AFDC Foster Care)	OAA, AB, APTD	100%
06	Room and Board, Retirement Home, Cafeteria	AFDC	75%
09	Foster Care for Adults - Non-Vendor		
10	ICP II - Vendor Nursing Care		
11	ICP III - Vendor Nursing Care		
12	Boarded Nursing Home - Vendor Nursing Care		
13	All Medical and Public Assistance Budgets for which no other plan is applicable		
14	Institutional - Mental Hospital	OAA, AB, APTD	\$137.00
15	Extended Care Facility	OAA & AB age 65 or over	
16	Institutional - State School for the Mentally Retarded	Adult Foster Homes	179.00
17	Institutional - Chest Hospital	AFDC	300.00

BASE PLAN 13 - OAA, AB, APTD

BASE PLAN 13 - AFDC SINGLE FIGURE NEEDS ALLOWANCE

Personal Needs		Non-Caretaker Cases		Caretaker Cases	
OAA, AB, APTD Adult		Family Size	Budgetary Needs (100%)	Family Size	Budgetary Needs (100%)
Resident	\$77.00				
Adult Essential Person	\$39.00				
Housing					
Public Rented Quarters (including Utilities)					
1 person	\$38.00	1	\$ 32.00	2	\$15.00
2-4 persons	\$42.00	2	62.00	3	158.00
5 or more persons	\$49.00	3	90.00	4	187.00
		4	118.00	5	218.00
		5	146.00	6	246.00
		6	174.00	7	273.00
		7	202.00	8	300.00
		8	230.00	9	328.00
		9	258.00	10	353.00
		10	286.00	11	380.00
		11	314.00	12	412.00
		12	342.00	13	439.00
		13	370.00	14	466.00
		14	398.00	15	493.00
		15	\$ 26.00 for each additional member	16	534.00
		16		17 or over	\$ 33.00 for each additional member
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4-member Caretaker Family
(Universe--60,246 Cases)

		Average
Personal Needs	\$9,797,200.00	\$143.557
Housing	2,309,299.99	33.838
Utilities	635,617.97	.9.314
Glasses	7,429.00	.109
Dentures	869.00	.013
Hearing Aids	55.00	.001
Professional Care	1,003.67	.014
Social Care	1,423.32	<u>.021</u>
TOTAL AVERAGE		\$186.867

Caretaker Cases
Averages of 4 Months

Family Size	4-Month Total # of Cases	4-Month Total Requirements	Average Requirements
2	115,686	\$13,256,411.47	\$114.59
3	93,023	14,462,096.75	155.47
4	68,246	12,752,897.95	186.87
5	49,272	10,763,386.26	218.45
6	32,969	8,106,795.39	245.89
7	20,393	5,573,260.60	273.29
8	11,694	3,503,617.67	299.61
9	6,685	2,177,045.05	325.66
10	3,469	1,225,449.03	353.26
11	1,749	665,357.30	380.42
12	704	290,385.10	412.48
13	340	149,360.92	439.30
14	114	53,429.03	468.68
15	27	29,361.78	497.26
16	12	6,405.16	533.76

Article VIII**PLAINTIFFS' FIRST INTERROGATORIES
and
DEFENDANTS' ANSWERS**

Plaintiffs' First Interrogatories, no. 4(a&c)— For the standards in effect prior to March 1, 1973, state the largest standard of need budgeted and the largest amount paid for basic needs including shelter but excluding special needs for each AFDC family size where the children are all under eighteen (18) years of age and have the following characteristics: (a) Caretaker families in private housing; (c) Noncaretaker families in private housing.

Defendants' Answers, no. 4(a&c)— For standards in effect prior to March 1, 1973, the largest standard of need budgeted and the largest amount paid for basic needs, including shelter but excluding special needs, for each family size where children are all under age 18 years and have the following characteristics were:

a. Caretaker families in private housing.

<u>FAMILY SIZE</u>	<u>MAXIMUM STANDARD OF NEED</u>	<u>MAXIMUM PAID</u>
2	\$136	\$102
3	172	129
4	197	148
5	228	171
6	253	190
7	278	209
8	303	227
9	328	246
10	353	265
11	378	284
12	403	302
13	428	321
14	453	340
15	478	359
16	503	377

c. Noncaretaker families in private housing.

<u>FAMILY SIZE</u>	<u>MAXIMUM STANDARD OF NEED</u>	<u>MAXIMUM PAID</u>
1	\$ 48	\$ 36
2	88	66
3	118	89
4	150	113
5	178	134
6	204	153
7	230	173
8	256	192
9	282	212
10	307	230
11	333	250
12	358	269
13	383	287
14	409	307
15	434	326

No. 14(d) text of FSH 3122.3, para. 4-6 (9/70)— When the applicant or recipient lives with non-dependent relatives in their shelter, his prorata share(s) of the shelter expense within the group maximum shall be budgeted provided the non-dependent relative does not meet all this expense for him. This means that the applicant and/or recipient must actually be participating in meeting shelter expense before his prorata share(s) can be budgeted.

When non-dependent relatives live with the applicant in his shelter, the applicant's prorata share(s) of the shelter expenses within the group maximum shall be an allowable expense, providing the non-dependent relatives do not meet this expense for him.

Regardless of the economic situation of the non-dependent relative in either of the above situations, both shelter and utilities will be budgeted only in the amount of the prorata share for the applicant and his dependents.

No. 14(d) text of FSH 3122, para. 5 (3/69)— When a recipient shares living arrangements with non-dependent relatives, his budget will carry his prorata share and that of his dependents of the utility chart figure, provided the non-dependent relative does not meet this expense for him.

Plaintiffs' First Interrogatories No. 19—State whether the method of converting to a single figure needs allowance bears any relationship to actual need for rent or shelter. And if so describe that relationship.

Defendants' Answer to No. 19— The State Department of Public Welfare does not hold that the shelter and utilities budgetary allowances which were in effect during the period November, 1971, through August, 1972, were adequate to meet those needs on an actuality basis because of insufficient funds available for payment of the actual cost of subsistence needs.

Article IX

PLAINTIFFS' MEMORANDUM IN SUPPORT of MOTION FOR SUMMARY JUDGMENT

Exhibits —

Size of family	March, 1972		January or February, 1972		
	Grant (75%)	Need (100%)	Cut %	Grant (75%)	Need (100%)
2	\$ 86	115	\$16 16%	\$102	\$136
3	116	155	13 10%	129	172
4	140	187	8 5.4%	148	197
5	166	218	7 4.1%	171	228
6	185	236	5 2.6%	190	253
7	205	273	4 1.9%	209	278
8	225	300	2 .68%	227	303
9	245	326	1 .45%	246	328
10	265	353	0 0%	265	353
+	Irreg.	Irreg.	+	+19	+25

Size of family	January or February			
	Cut %	Grant (75%)	Need (100%)	
2	\$13 13%	\$ 99	\$132	
3	2 1.9%	112	167	
4	+3 +2.2%	137	192	
5	+4 +2.5%	160	211	
6	+6 +3.3%	179	230	
7	+7 +3.5%	198	255	
8	+8 +3.7%	217	280	
9	+10 +4.3%	235	305	
10	+11 +4.3%	254	330	
+	Irreg. Irreg.	+19	+25	

TABLE THREE: AFDC
CHANGES FOR NON-CARETAKER⁴
FAMILIES IN PRIVATE² HOUSING

A-38

Size of family	Grant (75%)	March		January or February	
		Need (100%)	Cut	Grant (75%)	Need ⁵ (100%)
1	\$ 24	\$ 32	\$29	\$ 53	\$ 71
2	47	62	25	72	96
3	68	90	31	99	132
4	89	118	19	118	157
5	110	146	31	141	165
6	131	174	29	160	213
7	152	202	27	179	238
8	173	230	24	197	263
9	194	258	22	216	288
+	irreg.	irreg.	irreg.	+19	+25

A-39

TABLE FOUR: AFDC CHANGES FOR
NON-CARETAKER⁴ FAMILIES IN PUBLIC³
OR FEDERALIZED³ HOUSING

Size of family	January or February			
	Cut	%	Grant (75%)	Need ⁵ (100%)
1	\$22	48%	\$ 46	\$ 61
2	22	32%	69	92
3	20	23%	88	117
4	7	6.67%	106	142
5	21	16%	131	174
6	28	19%	152	199
7	16	9.5%	168	224
8	14	7.5%	187	249
9	12	5.8%	206	274
+	irreg.	irreg.	+19	+25

FOOTNOTES TO TABLES

1. Caretaker families before the cuts are presumed to have only one adult, all children under 18 years of age and no special needs.
2. Private housing families before the cuts are presumed to received the maximum shelter and the full utility allowance.
3. Families in public or federalized housing before the cuts are presumed to receive the full housing allowance.
4. Non-caretaker families are usually without an adult eligible to receive a grant or already receiving a grant such as children of an APTD recipient or children in the home of non-needy relatives.
5. For non-caretaker families need has been presumed to include full utility and shelter allowances for the size of the recipient family and the same presumptions as to other factors are made: All children under 18 years of age and no special needs.

March 8, 1973

Mr. Raymond W. Vowell, Commissioner
Department of Public Welfare
John H. Reagan Building
Austin, Texas 78701

Dear Mr. Vowell:

You will recall that the draft guide to Redefinition and Consolidation of Assistance Payments (4th draft) dated August 15, 1972, had a typographical error on page 9 under Item h. In the subject draft, the second sentence reads as follows:

The study should include all situations as they are found. For example, if a State agency is redefining shelter from "actual - cost - to-a-maximum" to flat amounts for shelter for family size, the study should, to hold the balance even, not include those cases where the shelter amounts were subsidized, were in fact zero, or were prorated.

This error was discovered before I worked with your staff in using the guide and a pen and ink correction was made in our working copy.

I am enclosing for your information the July 25, 1972, guide form which the August 15 guide was copied in part. The paragraph in question appears on page 8 of this guide and you will note that the sentence in question correctly reads:

For example, if a State agency is redefining shelter from "actual - cost - to - a - maximum" to flat amounts for shelter for family size, the study should, to hold the balance even, *not exclude* those cases where the shelter amounts were subsidized, were in fact zero, or were prorated.

I am also sending you a copy of a later draft dated September 20, 1972 which further elaborates on this point. See page 10, item g.

Sincerely yours,

Dudley S. Hall
Associate Regional
Commissioner
Assistance Payments

4th DRAFT
August 15, 1972

A GUIDE TO REDEFINITION AND CONSOLIDATION

PART ONE

A. Legal Background and Authority

1. According to Section 402(a)(23) of the Social Security Act, "A State Plan must provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

2. The *Code of Federal Regulations* (45 CFR 233.20(a)) requires that: (1) A State Plan must provide that the determination of need and the amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way except where

otherwise specifically authorized by Federal Statute.

(2)(i) A State Plan must specify a State-wide standard, expressed in money amounts, to be used in determining (a) the need of applicants and recipients and (b) the amount of the assistance payment.

(ii) The State Plan must, in the AFDC plan, provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the Standard.

. . .

g. Making an impartial study of actual agency practice in determining need and the amount of the assistance payment, for the items and factors to be considered.

h. Recording the actual amounts included in the budget for such items. The study should include all situations as they are found. For example, if a State agency is redefining shelter from "actual-cost-to-a-maximum" to flat amounts for shelter by family size, the study should, to hold the balance even, include all those cases where the shelter amounts were subsidized, were in fact zero, or were prorated. Including one or more of such variables as they occur in the valid study could either decrease the amounts or have no demonstrable effect, depending upon the frequency of occurrence of such

situations in the study and the caseload. If the State agency has fair averaged zero and/or prorated shelter amounts, a flat standard for shelter or flat grant, the State agency cannot introduce any policy which would duplicate this accountability.

This does not preclude a State agency from *excluding* from its study all cases where shelter was subsidized, zero, or prorated. If the decision is to exclude such situations, the State has not reduced the content of the standard. Excluding such variables, depending upon the frequency of their occurrence, could increase the appropriate amounts for shelter.

i. Whatever is done in the fair averaging process must continue and the standard cannot be reduced by State policy implementing the fair averaged amounts.

BEFORE ME, the undersigned Notary Public, on this day personally appeared TOM FORRESTER LORD, after being by me duly sworn, upon oath deposes and says:

THAT, he is the President of the Houston Housing Management Corporation and Executive Director of the Houston Housing Development Corporation and has from ten years' experience gained intimate knowledge of housing construction, management, and housing needs of low and moderate income families.

THAT, the median monthly rent for families residing in housing built under the Section 221 (d)(3) program for low-income persons is \$158. Since the U.S. Department of Housing and Urban Development will not subsidize more than 70% of the market rent in 221 (d)(3) projects, the minimum rent charged in Houston, Texas would average \$47.

THAT, the median monthly rent for families residing in housing built under the Section 236 program for moderate income families is \$146. This figure is what the tenant pays, and reflects the benefit of the Federal subsidy, which is in the form of an interest reduction on the mortgage.

THAT, the median rent for all apartment units in Harris County on July 20, 1973 was \$176. The median rent for a one bedroom apartment was \$144, for a two bedroom apartment \$188, and for a three bedroom apartment \$246.

THAT, housing for the poor, specifically housing built under the Section 221 (d)(3) program has full occupancy, e.g., on July 20, 1973 95% of all units were occupied. Conventional apartments had an 82% occupancy. Apartments built under Section 236 were 88% occupied.

THAT, according to the 1970 Census of Population and Housing, the median rent in the City of Houston was \$96.

THAT, the attached charts taken from *Houston-Galveston Area Apartment Survey*, July, 1973, are the source for the above statistical information.

FURTHER AFFIANT SAYETH NOT

EXECUTED this 23rd day of *October*, 19 73.

/s/ TOM FORRESTER LORD

SUBSCRIBED AND SWORN TO before me this 23rd day of *October*, 19 73.

/s/ NINA H. PARROTT
Notary Public in and for
Harris County, Texas

STATE DEPARTMENT OF PUBLIC WELFARE

P.O. Box 391
Harlingen, Tx 78550
September 10, 1971

Mrs. Paula Ortega
Rt. 2, Box 160-A
San Benito, Tx 78586

BOARD MEMBERS
WILL BOND
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COMMISSIONER
HERBERT C. WILSON
DEPUTY COMMISSIONER

RE: SUSTAINED APPEAL

Dear Mrs. Ortega:

The enclosed Form 21 is your official record of the recently held appeal hearing. In it the decision to lower your grant of assistance is being SUSTAINED.

As was explained to you at the appeal hearing, due to the fact that your mother and sister are now living in the home with you, the allowances for shelter and utilities are being pro rated. The effect of this is the reason for the lowering of your grant of assistance.

Very truly yours,

**STATE DEPARTMENT OF
PUBLIC WELFARE**

/s/
Israel P. Garza
Hearing Officer

IPG:irg

Attachments

8. Hearing Officer's Decision and Explanation

The point of issue is whether this AFDC grant should be lowered due to a pro ration of the shelter and utilities allowance.

The appellant stated at the appeal hearing that she had no other choice but to have her mother and sister live in the home since they did not have any other place to go. It was explained to the appellant that under these circumstances, the allowance for utilities and shelter would have to be pro rated. It meant that the amount for these items would have to be divided by the number of persons in the home. In her case there were four persons in the home at this time.

The budgeting procedures were explained to the appellant. Since the appellant is paying \$51.33 for shelter and the maximum for shelter is \$44 for four persons, the result is \$11 per person when divided. Therefore, the appellant and her son get a share of \$22 for shelter. For utilities, the \$13 divided by four indicates a pro rated share of \$3.25 for each person; giving the appellant and her son \$6.50. Therefore, the total need in the case is \$118.50. After this figure is multiplied by the 75 percent control factor, the unmet need is \$88.87. Since there is no income in the home at this time, the appellant was told that she would be receiving a grant of \$89.00.

Due to the above it is the decision of this Hearing Officer to sustain the decision to lower this AFDC grant. Reference is made to Financial Services Handbook, Section 3122.2, which states, "When a recipient shares living arrangements with non-dependent relatives, his budget will carry his pro rata share and that of his dependants of the utility chart figure, provided the non-dependent relative does not meet this expense for him." Reference is also made to

Financial Services Handbook, Section 3122.3, which states, "When non-dependent relatives live with the applicant in his shelter, the applicant's pro rata share of the shelter expenses [within the group maximum] shall be an allowable expense, provided the non-dependent relatives do not meet this expense for him."

It is recommended that the worker initiate the proper procedures of that the action might become effective.

STATE DEPARTMENT OF
PUBLIC WELFARE

By _____ /s/

Hearing Officer

Israel P. Garza

Type Name of Hearing Officer

P.O. Box 391 Harlingen, Tx

Type Address of Hearing Officer

DATE OF DECISION 9-10-71

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HOUSTON WELFARE RIGHTS ORGANIZATION,
INC., AGNES STAFFORD, INDIVIDUALLY
AND ON BEHALF OF HER GRANDSON;
DOROTHY MARIE PHOENIX, INDIVIDUALLY
AND ON BEHALF OF HER THREE MINOR
CHILDREN; AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

vs.

NO. CA-73-H-296
COMPLAINT CLASS ACTION

RAYMOND W. VOWELL, COMMISSIONER OF
THE TEXAS STATE DEPARTMENT OF PUBLIC
WELFARE, ET AL

DEPOSITION OF FELDON RAY LESTER, JR.

taken on the 24th day of April, A.D., 1973, beginning at 11:15 A. M., in the offices of the Legal Service Division, State Department of Public Welfare, Reagan Building, Austin, Texas, before Bette Jo Mitchell, a Notary Public in and for Travis County, Texas, pursuant to the following stipulation and waiver of counsel.

A P P E A R A N C E S :

FOR THE PLAINTIFFS:

MR. JEFFREY J. SKARDA, Houston Legal Foundation, 2912 Luell Street, Houston, Texas 77016.

FOR THE DEFENDANTS:

MRS. CAROLYN BUSCH, Legal Services Division, State Department of Public Welfare, Reagan Building, Austin, Texas;

Q What are your educational qualifications?

A B. A. in math from Texas A and M.

Q How long have you worked for the Texas State Department of Public Welfare?

A Since August 1st of '66.

Q And, during your time with the state department, have you primarily worked on computer operations?

A Yes.

Q Would you characterize yourself as a specialist in computer programs in the state department?

A Yes.

MR. SKARDA: I would like to introduce for the record Plaintiffs' Exhibit A, Caretaker Cases, Averages of Four Months. Why don't you number all of these.

(Instruments were marked
Plaintiffs' Exhibits A, B, C,
D, E, F, for identification)

Q (By Mr. Skarda) Mr. Lester, we have introduced Plaintiffs' Exhibit A through F. Plaintiffs' Exhibits A and B are averages of four months. It is my understanding that you had nothing to do with Plaintiffs' Exhibits A or B, is that correct?

A Correct.

Q Now, Plaintiffs' Exhibits C through F represent what I take to be computer print-outs that are the result of averaging for the months of November 1971 through August of 1972, is that correct?

A Yes.

Q What was your relationship to the programs supervision in developing these averages for each month?

A I was the analyst that set up the report to find the job for the programmer and was the supervisor of the project.

Q Did you outline the program that actually --

A Yes.

Q -- produced this?

A Yes.

Q What did the program -- What was it intended to do, its purpose, for each of these months?

A To total up -- to total the needs for the A. F. D. C. category and give some specific breakdowns of the needs, of the total needs. For instance, personal needs were broken down, housing, utilities, and social care and that sort of thing.

Q Let's look at the first month you did that, November of 1971, that is Plaintiffs' Exhibit C, is it not?

A Correct.

Q Now, would you please explain to me what these notations mean on each one of these? I think the first page of that exhibit says: Budgeted Amounts for A. F. D. C. Cases with No Caretaker Included. What does that mean?

A That means that we included in this part of the report only the A. F. D. C. cases that did not have a caretaker or certified eligible adult recipient in the house. The adult recipient was only the payee for the children.

Q There would only be children in that A. F. D. C. certified group then.

A That's correct.

Q On this first page you only average personal needs and housing, is that correct, by family size?

A Correct.

Q Now, the fact that there is a blank for family size of thirteen, fifteen and sixteen, does that mean there weren't families that large with these kind of characteristics?

A That's correct, there just happened not to be families with that number of people in the house.

Q Then, on the next page, you averaged in those for utilities, glasses and dentures, is that correct?

A Yes.

Q And, the third page would be for hearing aids, personal care, social care. And, then you have the total budgeted needs for that family. That would be a summary of the other figures.

A Yes, that is a summary of everything, excluding these special allowances of glasses, dentures and hearing aids allowances.

Q I see. Then, looking on page four of that, you begin picking up budgeted amounts for A. F. D. C. cases with one caretaker included.

A Yes, that's correct.

Q What does that mean, one caretaker?

A That means that we had one adult, A. F. D. C.

recipient in the family, a parent or grandparent, for the A. F. D. C.

Q And, on page seven you do it for A. F. D. C. cases with two caretakers. That would be your A. F. D. C. for each capacity situation, generally speaking?

A Well, I really can't speak on that as policy, but, yes, I am sure that is true.

Q That would mean there would be both a mother and father in the household that would be eligible for A. F. D. C.

A Yes, that's correct.

Q And, finally, on page ten, you have it with all caretakers included. Now, what does that mean exactly?

A That means that we did a sub-total here for the one and two caretaker families report and combined them into one report.

Q I see. This does not include the non-caretakers.

A That's true.

Q Okay.

A It does not include the no caretakers report.

Q Now, in developing each one of these sums, numbers of cases, and average figures for each item of need for each family size, depending upon whether it has no caretakers, one caretaker or two caretakers, did you average what was actually in the budgeting column for that family? Where did you get this figure for each?

A Now, you are speaking of which average?

Q Where did the figures come from for the amount

budgeted?

A That came by totaling of each of the specific items, personal needs, housing, utilities, glasses, dentures, hearing aids, professional care, social care, for each A. F. D. C. family.

Q Did you neglect any family when you did this?

A No, we didn't. We didn't include the medical assistance only cases, cases that do not get a grant. These figures are only taken for A. F. D. C. cases that were getting grants.

Q For A. F. D. C. cases that were getting grants then, your averaging process took into account every case.

A Every case, yes.

Q So it is what I think you would call an actual average.

A Yes, right.

Q You did this for four different months, November, '71, February, '72, May of '72 and August of '72, is that correct?

A Yes.

. . .

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HOUSTON WELFARE RIGHTS ORGANIZATION,
INC., AGNES STAFFORD, INDIVIDUALLY
AND ON BEHALF OF HER GRANDSON;
DOROTHY MARIE PHOENIX, INDIVIDUALLY
AND ON BEHALF OF HER THREE MINOR
CHILDREN; AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

vs.

CA NO. 73-H-296
COMPLAINT CLASS ACTION

RAYMOND W. VOWELL, COMMISSIONER OF
THE TEXAS STATE DEPARTMENT OF PUBLIC
WELFARE, ET AL

DEPOSITION OF TERRY G. TEMPLE

taken on the 24th day of April, A. D., 1973, beginning at 11:40 A. M., in the offices of the Legal Services Division, State Department of Public Welfare, Reagan Building, Austin, Texas, before Bette Joe Mitchell, a Notary Public in and for Travis County, Texas, pursuant to the following stipulation and waiver of counsel.

A P P E A R A N C E S :

FOR THE PLAINTIFFS:

MR. JEFFREY J. SKARDA, Houston Legal Foundation, 2912 Luell Street, Houston, Texas 77016.

FOR THE DEFENDANTS:

MRS. CAROLYN BUSCH, Legal Services Division, State Department of Public Welfare, Reagan Building, Austin, Texas;

Q What are your educational qualifications, Mr. Temple?

A Well, I have a Bachelor's Degree, and I have had seven years experience with the department.

Q And, how long have you worked here at the state office?

A About two years; almost two years.

Q We have already introduced Plaintiffs' Exhibits A, B, C, D, E and F. I would like to draw your attention to Plaintiffs' Exhibits A and B, these are the averages of the four months. Did you prepare these averages?

A Yes, I did.

Q Now, what are these averages, what do they represent?

A They represent a compilation of the number of recipients we had, or the number of cases that we had in each family size during a four month period, or during four specified months on which we based these averages.

Q Now, these four specified months that you are talking about, are these the records from which you took those averages --

A Right.

Q -- Plaintiffs' Exhibits C through F.

A Yes.

Q Now, how would you go about arriving at the averaged figure? Let's look at the circumstances of the family of four, caretaker family, arriving at the housing figure.

A All right. In arriving at the housing figure for that size family, we took the number of cases that we had in a caretaker family.

Q Would that be on page ten of Plaintiffs' Exhibit C for the month of November, 1971?

A Yes. We would take this figure, which is sixteen thousand zero seventy-three cases, and we added, for each of these months, this number of persons, you know, that is specified here in this column. Then we also added the total amount that's budgeted for housing for that family size group for each of the four months, and then we divided this sum of the budgetary allowances by the sum of the number of cases, to arrive at the average for housing for that size family group.

Q Developing your average for the four families on Plaintiffs' Exhibit A, did you take this thirty-three dollar point three one seven figure for November and a similar figure for all of the other months and just average that together, or how did you do it?

A No, we took the total amount budgeted for housing in each of the months and came up with a grand total of money budgeted for housing. Then we took a total of the number of recipients, or number of cases, rather, for that family size in each of the months, added them together to come up with a grand total, and then we divided the grand total of cases into the grand total of housing that was budgeted.

Q Let's just go through with one example.

A All right.

Q For the family of four, housing in November of 1971, on page ten, five hundred thirty-five thousand five hundred three dollars and thirty cents was the total amount.

A Right.

Q That would be added to every other total amount and then divided by the sum of fourteen thousand one hundred seventy-two--

A No, no.

Q Please explain to me how that worked.

A Okay. This amount that is budgeted here for housing, five thirty-five five zero three thirty was the amount budgeted in four member families with caretakers for this month. We also took like figures in these other months for that family size and added those four totals together to come up with a grand total budgeted for housing for that family size group in these four months. Okay. Then, we divided that by the grand total of four person caretaker families in each of these four months. Now, this number here is the number of cases in which housing was budgeted.

Q And, did you use that figure to divide into the amount budgeted?

A No.

Q You didn't?

A No.

Q Why didn't you use that figure?

A We were consulting with Mr. Dudley Hall, who is from the regional H. E. W. Office, and he shared with us his feeling that H. E. W. would prefer that we include all persons who are in this family size group, rather than just those that had an expense for housing.

Q So those cases which weren't represented here on

page ten, in the figure of the number of cases budgeted for housing, represent those families that had zero needs budgeted for housing, basically.

A That's right. Apparently there were close to two thousand cases which had no housing expense during that month.

Q And, that way you accounted for the situations where zero need was budgeted for housing.

A We included those in the average.

Q Yes. Is the same thing true for the utilities figure?

A That is true for each item, utilities and each of the other items that was specified there.

Q Okay. Let's look at page eleven which has the utility figure for a family of four. There were twelve thousand six hundred twenty-four families budgeted for the utilities figure, however, again, there were sixteen thousand seventy-three families receiving a grant at that family size.

A Yes.

Q So the differences would account for those people who had zero utilities budgeted.

A Right.

Q That would also include all of your public housing people who didn't have a formal utilities allowance budgeted.

A That's correct.

Q Did you use any other documents or records other than the computer print-out to arrive at your averages?

A No.

MR. SKARDA: I have no further questions at this time.

MRS. BUSCH: I have no questions.

MRS. BROWN: Could we go off the record a minute.

(whereupon there was an off the record discussion)

MRS. BUSCH: We do have just a few questions.

CROSS EXAMINATION:

BY MRS. BUSCH:

Q Mr. Temple, I would like to pursue this point a little further in arriving at an average. Is it correct that in arriving at an average, it is necessary to include all cases?

A That's correct.

Q Otherwise, it would not be an average, --

A That's correct.

Q -- is that correct?

A Those are the guidelines under which we were working.

Q And, these are the guidelines from H. E. W.

A They were verbal instructions from Mr. Hall at H. E. W. as to his understanding of the draft guidelines.

Q All right. Now, one more point. If you had excluded all those cases that had a zero housing

allowance, and you arrived at not an overall average then, but just an average of those who had a housing allowance, and then when the new system was implemented you gave everyone the housing allowance that had been derived by selecting out those cases that had a housing allowance, would it then not be an expenditure over and above the prior expenditures?

A Yes, it would have. It wouldn't have been a true average.

Q It would not have been an average at all.

A No.

Q And, this, as you understood, was the reason that H. E. W. stated that we should average all grants.

A That's correct.

Q And, not just those that had a particular allowance.

A That's correct.

Q Because after the averaging was done, then every case would get that allowance.

A That's correct.

Q All right.

MRS. BUSCH: No further questions.

RE-DIRECT EXAMINATION:

BY MR. SKARDA:

Q In summary, let's just go over the pages. You prepared two different sets of averages for the four months. Plaintiffs' Exhibit A is for the caretaker

averages, and Plaintiffs' Exhibit B is for the non-caretaker averages, is that correct?

A That's correct.

Q Let's look at the caretaker cases for a family of four. In preparing the caretaker average, you were only concerned with those pages ten, eleven and twelve of each of the monthly print-outs, is that correct, for all caretakers?

A That is correct.

Q And, say for the housing figure of two thousand three hundred and nine two hundred ninety-nine point ninety-nine, that represents the sum of all the housing needs budgeted for four months, taken off of each of the four month periods, is that correct?

A That's correct, that is the sum total of the four months housing allowance.

Q And, the universe of sixty-eight thousand two hundred and forty-six cases represents the sum total of all the families that were receiving a grant for that family size, that would be taken off the first -- Well, the total listed budgeted family size, is that correct, and added together for each of the four months?

A That's correct.

Q And, then you divided the sixty-eight thousand two forty-six into the total housing figure to get the thirty-three point eight three eight.

A That's right.

Q That represented that part of the housing needs averaged together for the four member caretaker family. That was then added to all the other averages

that came up with your total average of one hundred eighty-six dollars eight six seven.

A That's right.

Q And, that figure was converted to what is essentially now represented in your Form 36, Plan 13, for A. F. D. C. single figure needs allowance of one hundred eighty-six point eighty-seven, is that correct?

A That was rounded to a hundred and eighty-seven dollars in our final figures, yes.

Q Okay.

MR. SKARDA: I have no further questions.

MRS. BROWN: I have just one question.

CROSS EXAMINATION:

BY MRS. BROWN:

Q Originally, when you set out to derive the averages working from the computer print-outs for each of the four months representing each of the four seasons of the year, what, if any, fiscal limitations or guidelines were you working under?

A We were not working specifically under any fiscal guidelines, except we knew that if we averaged the budgetary allowances that we had in our cases at the present time, that we should come out technically with the same amount of expenditures that we had prior to going to the flat average system.

Q So, in other words, you attempted to spend the same amount of money that the department was spending under the old system.

A That's correct.

MRS. BROWN: That is all.

MR. SKARDA: One last question, Mr. Temple. When did you do these averages?

A This was -- I have to look here for the specific date. It was in September of 1972.

MR. SKARDA: No further questions.

MRS. BUSCH: No questions.

MRS. BROWN: No questions.

Terry G. Temple

SUBSCRIBED AND SWORN to before me, the undersigned authority, on this ____ day of _____, A. D., 1973.

Notary Public

ARTICLE X

42 U.S.C. §602(a) (7) ()--A State plan for aid and services to needy families with children must... (7) provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income....